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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Isidoro Rodriguez, Esq.,

Petitioner,

v.

Guy Vander Jagt, Esq., Harrison Pledger, Esq., Law Offices of Pledger & Feord, LP; HFP INC.; IOTA Partners; Jack Harbeston; Edris E. Harbeston; Jerome Barron; and Murdock & Co.,

Respondents.

On Petition For Writ of Certiorari
To the Supreme Court of Virginia and The Fairfax County Circuit Court

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PETITION FOR WRIT OF CERTIORARI

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In 1988 Petitioner Isidoro Rodriguez, Esq. ("Rodriguez") was specifically retained as an active Virginia attorney to provide *pro hoc vice* legal services to Respondent SSA Entities' $10 Billion contract claim against the Republic of Colombia, described by Congressmen Dan Burton and Phil M. Crane, "as the largest private claim by American citizens against a foreign state pending in the world." In 1998 SSA Entities' Lobbyist Respondent Guy Vander Jagt surreptitiously negotiated a settlement involving the lobbying for Plan Colombia to include $300 million of "soft money," simultaneous with SSA Entities dissolving and fraudulently transferring their claims. Therefore based on Virginia State Bar Ethics Opinion issued under VA Code § 54.1-3910, to Rodriguez confirming that though his *pro hoc vice* practice was outside of Virginia the VSB's jurisdiction, and his right to sue SSA Entities for fraud, this Complaint was filed to enforce his perfected VA Code § 54.1-3932 attorney's lien, and to protect this lien from the VA Code § 18.2-500 business conspiracy. But the Courts of Virginia in discriminatory unpublished summary orders dismissed the action and denied him of the rights granted by special legislation of the General Assembly to all other Virginia Attorneys.

QUESTION PRESENTED FOR REVIEW

1. WHETHER THE PRIVILEGE AND IMMUNITY CLAUSE ARTICLE IV, SEC. 2 OF THE U. S. CONSTITUTION WAS VIOLATED BY THE COURTS OF VIRGINIA DISCRIMINATORY REFUSAL TO ENFORCE AND PROTECT FROM THE FRAUD OF SSA ENTITIES, VANDER JAGT AND PLEDGER, RODRIGUEZ'S STAT-

UTORY RIGHTS UNDER VA CODE § 54.1-3932 AND § 18.2-500, GRANTED TO ALL OTHER VIRGINIA ATTORNEYS LOCATED IN VIRGINIA, BECAUSE HIS *PRO HOC VICES* PRACTICE IS OUTSIDE OF VIRGINIA THOUGH UNDER THE JURISDICTION OF THE VIRGINIA STATE BAR?

2. WHETHER THE COURTS OF VIRGINIA VIOLATED RODRIGUEZ'S RIGHT TO DUE PROCESS UNDER THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION BY THEIR DISCRIMINATORY REFUSING TO ENFORCE AND PROTECT HIS STATUTORY PROPERTY RIGHTS UNDER VA CODE § 54.1-3932 AND § 18.2-500 BECAUSE HE IS A VIRGINIA ATTORNEY PROVIDING *PRO HOC VICES* SERVICES OUTSIDE OF VIRGINIA?

3. WHETHER THE COURTS OF VIRGINIA VIOLATED RODRIGUEZ'S RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION TO EQUAL PROTECTION BY THEIR DISCRIMINATORY REFUSAL TO PROTECT AND ENFORCE HIS PERFECTED VIRGINIA ATTORNEY'S LIEN UNDER VA CODE § 54.1-3932 AND § 18.2-500 BY NOT GRANTING HIS DEMAND FOR A JURY TRIAL AS REQUIRED BY THE VIRGINIA CONSTITUTION AND VA CODE § 8.01-336, AND NOT COMPLYING WITH THEIR OWN *STARE DECISIS* ON ENFORCEMENT OF SPECIAL LEGISLATION?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW ..... (i)

TABLE OF CONTENTS ..... (iii)

TABLE OF CITED AUTHORITIES ..... (v)

CITATIONS TO OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATEMENT REQUIRED BY RULE 29.4(c) 2

U.S. and VIRGINIA CONSTITUTIONS, AND VIRGINIA STATUTES INVOLVED 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT OF CERTIORARI 9

I. THE WRIT SHOULD BE GRANTED BECAUSE IN VIOLATION OF THE PRIVILEGE AND IMMUNITY CLAUSE ARTICLE IV, SEC. 2 OF THE U.S. CONSTITUTION AND SHERMAN ANTITRUST ACT THE COURTS OF VIRGINIA HAVE DENIED RODRIGUEZ AS A VIRGINIA ATTORNEY OF HIS RIGHT TO A *PRO HOC VICE* PRACTICE OUTSIDE OF VIRGINIA UNDER THE JURISDICTION OF THE VIRGINIA STATE BAR BY DISCRIMINATORY DENYING HIM OF HIS STATUTORY PROPERTY RIGHTS 9

A. Privilege and Immunity 12
B. Sherman Anti Trust and Privilege and Immunity 17

II. THE WRIT SHOULD BE GRANTED BECAUSE COURTS OF VIRGINIA HAVE DISCRIMINATORY DENIED RODRIGUEZ OF DUE PROCESS IN NOT ENFORCING AND PROTECTING HIS STATUTORY PROPERTY RIGHTS GIVEN TO ALL VIRGINIA ATTORNEY LOCATED IN VIRGINIA BECAUSE HIS *PRO HOC VICE* PRACTICE IS OUTSIDE OF THE STATE BUT UNDER THE VSB'S JURISDICTION. 19

III. THE WRIT SHOULD BE GRANTED BECAUSE COURTS OF VIRGINIA HAVE DISCRIMINATORY DENIED RODRIGUEZ EQUAL PROTECTION OF THE LAWS BY NOT PROVIDING THE DEMANDED JURY TRIAL AND NOT FOLLOWING *STARE DECISIS* 21
A. Equal Protection 21
B. Demand for Jury Trail 22
C. The Court of Virginia ignored *Stare Decisis* 25

CONCLUSION 29

Appendix A--Orders, Relevant Portions of Transcript Below, and Virginia State Bar Ethics Opinion.

Appendix B--U.S. and Virginia Constitution, and Virginia Statutes.

TABLE OF CITED AUTHORITIES

Cases:

English & Smith v. Metzger, 901 F.2d 36, 39 (4th Cir. 1990) 14, 16, 20, 26, 27

Austin v. New Hampshire, 420 U.S. 656 (1975) .. 14

Barnard v. Thorstenn, 489 U.S. 546 (1989) 15

Bell v. *Milwaukee*, 746 F.2d 1205, 1261 (CA7 1984) 23

Biser v. Town of Bel Air, 991 F.2d 100, 103-04 (4th Cir.), cert. denied 114 S.Ct. 182 (1993) 19

Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed. 2d 548 (1972) 12, 19

Boddie v. *Connecticut*, 401 U.S. 371 (1971) 23

Brown v. Sparks, 262 Va. 567, 554 S.E.2d 449 (2001) 25

Buntin v. City of Danville, 93 Va. 200, 212, 24 S.E. 830, 833 (1896) 24

Chambers v. *Baltimore & Ohio R. Co.*, 207 U.S. 142, 52 L. Ed. 143, 28 S. Ct. 34, 6 Ohio L. Rep. 498 (1907) 22

City of Philadelphia v. New Jersey, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978) 18

Corfield v. Coryell, 6 F. Cas. 546 (No. 3,230) (CCED Pa. 1823) 12, 13

Edlow v. Arnold, 243 Va. 345, 347, 415 S.E.2d 436, 437 (1992) 24

EPLUS Technology, Inc. v. Patricia Aboud et al, 155 F.Supp2d 692 (E.D. VA 2001) 12, 17

Etheridge [v. Medical Center Hospitals, 237 Va. 87, 376 S.E.2d 525 (1989) 10, 24

Fary v. Aquino, 218 Va. 889, 241 S.E. 2d 799 (1978) 27

Frazier v. Heebe, 482 U.S. 641 (1987) 15

Garcia v. San Antonio MTA, 469 U.S. 528 (1985) 28

Goldfarb v. Virginia State Bar, 421 U.S. 773, 44 L.Ed. 2d 572, 95 S.Ct 2004, reh. den 423 U.S. 886 (1975) 17

Hicklin v. Orbeck, 437 U.S. 518 (1978) 14

Hinzman v. Fine, Fine, Legum & Fine, 217 Va. 958 at 964, 234 S.E.2d 282 (1977) 27

Hughes v. Cole, 251 Va. 3, 465 S.E.2d 820(1996). 11, 26, 27

In re Lockwood, 154 U.S. 116, 14 S.Ct. 1082, 38 L.Ed. 929 (1894) 21

Katopodis v. Liberian S/T Olympic Sun, 282 F.Supp. 369 (E.D. Va. 1968) 27

Knoingsberg v. State Bar of California, 353 U.S. 252, 77 S.Ct. 722 1 L.Ed. 2d 810 (1957) 22

M. L. B. v. *S. L. J.*, 519 U.S. 102, 136 L. Ed. 2d 473, 117 S. Ct. 555-107 (1996) 23

Mandel v. Allen, 81 F.3d 478, 481 (4th Cir. 1996) 19

Matthews v. Eldridge, 424 U.S. 319, 335 (1976) . 19

Montavon v. United States, 864 F.Supp. 519 (E.D. Va. 1994). 27

Murray v. *Giarratano,* 492 U.S. 1, 106 L. Ed. 2d 1, 109 S. Ct. 2765, n. 6 (1989) 23

New York. Kulko v. Superior Court, 436 U.S. 84 (1978) 19

Norvell v. Illinois, 373 U.S. 420, 83 S.Ct. 1363, 10 L. Ed. 2d. 456 (1963) 21

Pennsylvania v. *Finley*, 481 U.S. 551, 95 L. Ed. 2d 539, 107 S. Ct. 1990 (1987) 23

Perry v. Sinderman, 408 U.S. 593, 93 U.S. 2694, 33 L.Ed.2d 570 (1972) 12

Pulliam v. Coastal Emergency Services, 257 Va. 1, 509 S.E.2d 307 (1999) 10, 24

Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984) 26

Ruebush v. Funk, 63 F.2d. 170 (4th Cir. 1933) ... 27

Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 l.ed2d 810 (1957) 21

Scott v. Greenville County, 716 F.2d 1409, 1418 (4th Cir. 1983) 19

Selected Risks Ins. Co. v. Dean, 233 Va. 260, 355 S.E.2d 579 (1987) 28

Supinger v. Stakes, 255 Va. 198, 203, 495 S.E.2d 813 (1998) 24

Supreme Court of Virginia v. Friedman, 487 U.S. 59 (1988) 15, 26

Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985) 14, 15

Swekel v. *River Rouge,* 119 F.3d 1259 (CA6 1997) 23

Tignor v. Parkison, 729 F.2d. 977 (4th Cir. 1984) 27

Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156, 92 L. Ed. 1460 (1948) 17

Turner v. Lotts, 244 Va. 554, 422 S.E.2d 765 (1992) 25

Warren Christopher, Former Secretary of State, et Al., Petitioners V. Jennifer K. Harbury, 2002 U.S. LEXIS 4647, 536 U.S. 403; 122 S. Ct. 2179; 153 L. Ed. 2d 413 (2002) 22

Wolff v. *McDonnell,* 418 U.S. 539, 41 L. Ed. 2d 935, 94 S. Ct. 2963, 71 Ohio Op. 2d 336 (1974) 23

Constitution, Treaty, Statutes, and Regulations:

Art. I, Section 8, cl. 3, United States Constitution 17

Article IV, sec 2 of the U.S. Constitution . 12, 16, 22

5th Amendment to the Constitution 19, 23

14th Amendment to the Constitution . 14, 16, 20, 26, 27

15 U.S.C. Sec. 1, Sherman Antitrust Act 17

28 U.S.C. § 2403(a) and (b) 2

Article I, § 11 of the Constitution of Virginia . 24, 27

Article I, § 11 of the Constitution of Virginia . 11, 26

Article IV, § 14 of the Constitution of Virginia . . . 10, 26, 27

VA Code § 18.2-499 and § 500 12

VA Code § 18.2-500 . . . . . 14, 16, 20, 25

VA Code § 54.1-3910 . . . . . 5, 17, 20

VA Code § 54.1-3932 . . . . . 10, 11, 17

VA Code § 8.01-336 . . . . . 24, 25

Miscellaneous Material:

1992 Va. AG 155 . . . . . 14, 16, 20, 26, 27

1996 Va. AG 23 11

CITATIONS TO OPINIONS BELOW

The unpublished orders of the Supreme Court of Virginia whose review is sought are reproduced in the Appendix at A-1, A-2, A-3, A-4, and A-5. The unpublished bench and written summary orders of the Fairfax County Circuit Court ("Circuit Court") whose review is sought are reproduced in the Appendix at A-6, A-10, A-11, and A-16.[1]

STATEMENT OF JURISDICTION

The Supreme Court of Virginia denied motions for a stay of the mandate on November 5, 2004 (A-1 and A-2). As to Respondents HFP Inc.; IOTA Partners; Jack Harbeston; Edris E. Harbeston; Jerome Barron; and Murdock & Company ("SSA Entities"),[2] the panel

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[1]"A-" references are to pages in the first section of the attached Appendix.

[2]SSA Entities are a joint venture that assumed Sea Search-Armada and Armada Company's claim to 15 treasure troves targets sunk in the territorial/international waters off the coast of Colombia valued at $10 Billion (*"Treasure Trove"*): (i) Respondent IOTA Partners LP, is an Idaho limited partnership organized by Respondent Jack Harbeston in 1988, for the sole purpose of the "salvage of treasure trove in or about Colombia," which is owned by Sea Search-Armada and Armada Company; (ii) Respondent Murdock & Co., and James Barron are the main investor in IOTA Partners; (iii) Respondent HFP, Inc., is owned by Harbeston and incorporated in the State of Washington, to serve as the General Partner of IOTA Partners LP. Because Sea Search-Armada and Armada Company fraudulently dissolved in 2002 and their assets were secretly transferred to SSA Entities, they are not parties.

of the Supreme Court of Virginia entered an order on October 12, 2004 (A-3), refusing the appeal of the summary bench order of the Circuit Court dated February 27, 2004(A-9 and A-10). As to SSA Entities Chief Lobbyist Respondents Guy Vander Jagt ("Vander Jagt"), and their attorney Harrison Pledger and the Law Firm of Pledger & Feord LP ("Pledger"), on October 1, 2004 the Supreme Court of Virginia denied a Petition for Rehearing (A-4). The panel of the Supreme Court of Virginia entered an order on August 13, 2004 (A-5), denying appeal of the summary bench order of the Circuit Court dated January 23, 2004 (A-15 and A-16). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a), Article IV, Sec. 2, of the U.S. Constitution, and the V and XIV Amendments.

STATEMENT REQUIRED BY RULE 29.4(c)

The Court is informed that 28 U.S.C. § 2403(b) may apply and this Petition has been served upon the Attorney General of the Commonwealth of Virginia. Neither the Supreme Court of Virginia nor the Circuit Court certified to the Attorney General that pursuant to Article of IV, sec. 2, the 5th and 14th Amendments to the U.S. Constitution the constitutionality of their rules of procedure is called into question as depriving Rodriguez of the privileges and immunities of the laws of Virginia as a Virginia attorney providing *pro hoc vice* services outside of Virginia under the jurisdiction of the Virginia State Bar, Virginia Code § 54.1-3910, due process and equal protection of his perfected Virginia Attorney's Lien for *pro hoc vice* legal services pursuant to VA Code § 54.1-3932 and VA Code § 18.2-500.

U.S. and VIRGINIA CONSTITUTIONS, AND VIRGINIA STATUTES INVOLVED[3]

PRIVILEGES AND IMMUNITIES, Art. IV, 2 ..... B-1

AMENDMENT V B-1

AMENDMENT VII B-1

AMENDMENT XIV B-1

CONSTITUTION OF VIRGINIA, SECTION 11 ... B-1

Virginia Code § 54.1-3932. Lien for fees B-2

Virginia Code § 18.2-499, Business Conspiracy .. B-2

Virginia Code § 18.2-500, Business Conspiracy .. B-3

Virginia Code § 8.01-328.1. Virginia's Long-Arm Statute B-3

Virginia Code § 54.1-3910. Organization and government of Virginia State Bar B-4

Virginia Code § 8.01-336. Jury trial of right; waiver of jury trial B-4

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[3]"B-" references are to pages in the second section of the attached Appendix.

STATEMENT OF THE CASE

On June 2, 1988 when SSA Entities Chief Lobbyist Vander Jagt was a Member of the U.S. House of Representatives, he protested in the Congressional Record (E-1806), the attempted "expropriation" of SSA Entities contract claims to the *Treasure Trove* by Colombia. Shortly thereafter in September 1988, Respondent Jack Harbeston ("Harbeston"), on behalf of SSA Entities retained Rodriguez as a Virginia Attorney providing *pro hoc vice* fiduciary and legal management services as their Legal Representative responsible for the contract litigation against Colombia.[4]

Two years after the filing of the contract litigation against Colombia, due to SSA Entities failure to pay invoices for services under their contract Rodriguez filed for and obtained on February 27, 1990, Virginia Bar Legal Ethics Opinion #1325 (A-18)("VA Ethics Opinion"), which stated,

> . . . [Rodriguez being] admitted to practice in Virginia is subject to the Virginia Code of Profes

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[4] Under the Colombian Code to establish jurisdictional standing to sue Colombia, Rodriguez as the "Legal Representative" of SSA Entities must be given the total corporate authority of the Board of Directors. Thus SSA Entities need to have Rodriguez's fiduciary duty supervised by the Virginia Sate Bar, who although domiciled and a voting resident in Virginia since 1979, resided in Colombia between 1989 and 1999, in compliance with his *pro hoc vice* fiduciary duty to SSA Entities. *See Master Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children,* S. Ct. Docket No. 04-724, and other related Petitions.

> sional Responsibility although engaged in practice elsewhere . . . when [he] assumes the responsibility of acting as a fiduciary . . . As such Rodriguez's suit for Attorney fees is permissible . . . to prevent fraud or gross imposition.

Upon receipt of notice of the VA Ethics Opinion, SSA Entities knowing negotiated and entered into a new verbal 10% contingency fee agreement with Rodriguez in December 1990, so to continue availing themselves of the protection of VA Code § 54.1-3910, which assured Rodriguez's fidelities as a Virginia Attorney providing *pro hoc vice* services in Colombia.[5]

On June 16, 1998, Rodriguez submitted through his Agent the initial response of SSA Entities to Colombia's settlement offer as a "total accord on the claims [to the 15 *Treasure Trove* targets], and the consequent identification and recovery of the treasures or shipwrecked antiquities claimed," in the "areas defined by the contract." But in response to Rodriguez's request for a status report of Vander Jagt as SSA Entities chief negotiator, on April 6, 2000, Harbeston sent from the State of Washington a letter into State of Virginia terminating without Board Authorization Rodriguez as

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[5]VA Code § 54.1-3910, states "[a]ll advisory opinions . . . shall be incorporated into the Code of Virginia . . . . " This includes the VA Legal Ethics Opinion issued in the instant action that stated that to "prevent fraud or gross imposition" Rodriguez, has the right to sue for his fee.

SSA Entities Legal Representative, and advising that Rodriguez was to look to his Agent for fees.

In response upon returning to reside in Northern Virginia, Rodriguez perfected his statutory charging Virginia Attorney's Lien pursuant to VA Code § 54.1-3932, by sending notice to all the Board of Directors of SSA Entities and Vander Jagt, as their Chief Lobbyist.

Since October 2000, Pledger has represented SSA Entities and has repeatedly made misstatements of fact and law in response to Rodriguez efforts to enforce his Virginia Attorney's Lien under VA Code VA Code § 54.1-3932, and protect his lien from a VA Code § 18.2-500 business conspiracy by SSA Entities fraud. However, for some unknown reason the federal courts have ignored the statutory gravamen of the Complaint based on Rodriguez's rights as a Virginia Attorney providing *pro hoc vice* services, to dismiss the action for lack of personal jurisdiction based on the theory of at-will-contracts (A-7 and A-8).

In June/July 2002, SSA Entities dissolved and secretly transferred its interest in their 15 *Treasure Trove* targets, after allegedly Vander Jagt surreptitiously negotiated a settlement based on the U.S. enacting Plan Colombia, providing for more than $300 million of "soft money."

In November 2003, Rodriguez filed this action in the Circuit Court to enforce his perfected charging Virginia Attorney's Lien VA Code § 54.1.3932, for $4.6 million based on *quantum merit* for the more than

twelve years of *pro hoc vice* fiduciary and legal management services to Respondents SSA Entities which at all times was under the jurisdiction of the Virginia State Bar, VA Ethics Opinion (A-18), and Virginia Code § 54.1-3910 (B-4). Thus personal jurisdiction in the Commonwealth of Virginia over SSA Entities as nonresident is based on VA Code § 8.01-328.1 (1), because SSA Entities transacted business in the State by contracting for and agreeing to the protection of the laws of Virginia over Rodriguez's *pro hoc vice* services.

In addition this action was filed to protect Rodriguez's property rights in his Virginia statutory lien from a common law and Business Conspiracy to commit fraud by SSA Entities, Vander Jagt, and Pledger (both residents of the Commonwealth of Virginia) to commit fraud and thereby injure Rodriguez's business and profession in violation of VA Code § 18.2-500. As to this count jurisdiction is based in the State under VA Code § 8.01-328.1 (3) and (4).

In response to Vander Jagt and Pledger's motions to demurrer, which disputed the facts stated in the Complaint, Rodriguez demanded a jury trial again pursuant Article I Sec. 11 of the Constitution and VA Code § 8.01-336(a).

On January 15, 2004, prior to the hearing before the Circuit Court set for January 23, 2004, Rodriguez filed a copy with the Court of SSA Entities et al., Virginia Bar Complaint, VSB Docket No. 04-052-

0794,[6] where they surreally confessed that Harbeston violated Rodriguez's Power of Attorney as Legal Representative given by the Board of Directors by interfering with said powers; Harbeston admitted that he and Rodriguez's Agent have disregarded their respective fiduciary and legal duty to Rodriguez as Legal Representative of SSA Entities, violated Colombian Criminal Law and the laws of Virginia, and Harbeston made false statements to discredit and damage Rodriguez reputation as a lawyer.

On January 23, 2004, without providing the demanded jury trial, which at no time was waived, the Circuit Court without explanation summarily granted Vander Jagt and Pledger demurrers and dismissed the action "with prejudice," (A-15 and A-16). In its summary bench and written order the Circuit Court disregarded any consideration of the special legislation mandating the enforcement and protection of Rodriguez's perfected charging Virginia Attorney's Lien based on *pro hoc vice* service under the jurisdiction of the Virginia State Bar, but instead accepted the territorial jurisdiction argument of Vander Jagt and Pledger (A-11), which had nothing to do with the gravamen of the complaint and relevant facts support

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[6]To date after nearly 12 months the Alexandria Bar Counsel and Bar Committee are still conducting an intensive background investigation of Rodriguez, to which Rodriguez has both responded and supplied supplemental information, and met with the VSB investigator in October 2004.

ing the allegation of business conspiracy fraud in violation of VA Code § 18.2-500.[7]

One month later on February 27, 2004, again without providing the repeatedly demanded jury trial the Circuit Court summarily dismissed the action as to SSA Entities (A-10), and specifically refused the request to provide the legal basis for its decision (A-9).

On appeal Supreme Court of Virginia affirmed the Circuit Court in unpublished orders (A-1 to A-5).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE WRIT SHOULD BE GRANTED BECAUSE IN VIOLATION OF THE PRIVILEGE AND IMMUNITY CLAUSE ARTICLE IV, SEC. 2 OF THE U.S. CONSTITUTION AND SHERMAN ANTITRUST ACT THE COURTS OF VIRGINIA HAVE DENIED RODRIGUEZ AS A VIRGINIA ATTORNEY OF

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[7]As circumstantial confirmation of the on going skullduggery of SSA Entities, a motion was filed with the Circuit Court for judicial notice of the AP news article dated February 13, 2004, regarding the ruling of the Supreme Court of the Republic of Colombia denying SSA Entities claim to the 1707 Spanish Galleon *San Jose*. The claimed rights to the other 14 *Treasure Trove* targets, were not addressed, and allegedly were fraudulent transfer when Sea Search-Armada and Armada Company dissolved. It is important to note in total disregard of Vander Jagt 1988 concerns regarding the preventing of the "expropriation of the vested rights of Sea Search Armada," no protests were issued by either SSA Entities, U.S. Congress or U.S. Executive Branch.

HIS RIGHT TO A *PRO HOC VICE* PRACTICE OUTSIDE OF VIRGINIA UNDER THE JURISDICTION OF THE VIRGINIA STATE BAR BY DISCRIMINATORY DENYING HIM OF HIS STATUTORY PROPERTY RIGHTS.

Article IV, § 14 of the Constitution of Virginia provides that "[t]he General Assembly shall not enact any local, special, or private law . . . (18) [g]ranting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity." However, regarding rights under "special legislation" passed by the Virginia Legislature, the Supreme Court of Virginia in *Pulliam v. Coastal Emergency Services,* 257 Va. 1, 15, 509 S.E.2d 307 (1999), stated in no uncertain terms that,

> In *Etheridge*, we noted that we had previously held that laws may be made to apply to a class only, even though the class may be small, provided the classification is reasonable, not arbitrary, and the law is made to apply to all persons in the class without distinction. 237 Va. at 102, 376 S.E.2d at 533. We also noted that if the classification bears a reasonable and substantial relation to the object sought to be accomplished, it will survive a special-laws constitutional challenge. *Id.* (Emphasis added).

Regarding the enforcement of a perfected VA Attorney's Lien, the Supreme Court of Virginia has held that the language of VA Code § 54.1-3932, provides,

> . . . "any attorney [employed] to prosecute [a claim sounding in tort or in contract] shall have a lien upon the cause of action as security for his fees for *any services* rendered in relations to the cause or claim.' (Emphasis in the opinion). This language is broad and permits no interpretation limiting the benefits of the statute to Virginia lawyers. . . ."(Emphasis added). *Hughes v. Cole,* 251 Va. 3 at 27, 465 S.E.2d 820(1996).

Regarding the protection of the above statutory property right Article I, § 11, of the Constitution of Virginia provide that ""[t]hat no person shall be deprived of his . . . property without due process of law; . . . .

Consequently, as special legislation protecting all other members of the Virginia Bar practicing locally, VA Code § 54.1-3932, the rules of the Courts' of Virginia must provide the same equal protection to Rodriguez's statutory property rights in his international *pro hoc vice* practice which is under the supervision of the Virginia State Bar (A-18).[8] Otherwise as repeatedly argued below the failure to enforce a Virginia attorney's property right because it relates to a *pro hoc vice* practice vis-a-vis the same property right

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[8]In the Commonwealth of Virginia Attorney General Opinion 1996 Va. AG 23, it was confirmed that the General Assembly may limit rule-making authority of Supreme Court and is not encroachment on powers of either branch to perform their constitutionally assigned functions and is not violation of separation of powers doctrine. *See* 1992 Va. AG 155.

based on a local practice would fail to survive constitutional challenge (A-8 and A-12). [9]

Logically this includes the statutory right to protect his reputation, business, profession and perfected statutory charging Virginia Attorney's Lien from the malicious common law torts and on going Business Conspiracy to commit fraud in violation of VA Code § 18.2-499 and § 500, *see EPLUS Technology, Inc. v. Patricia Aboud et al*, 155 F.Supp2d 692 (E.D. VA 2001).

A. Privilege and Immunity

The classical judicial exposition of the meaning of this phrase is that of Justice Washington in *Corfield v. Coryell*, 6 F. Cas. 546 (No. 3,230) (CCED Pa. 1823). There the question at issue was the validity of a New Jersey statute which prohibited "any person who is not, at the time, an actual inhabitant and resident in this State" from raking or gathering "clams, oysters or

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[9] Similarly this Court has recognized state-created interests called "entitlements, "*see Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed. 2d 548 (1972). Such entitlements are privileges extended to a well-defined section of society. To foster a claim to such an entitlement, the claimant must demonstrate both his inclusion in the group expecting the entitlement and that such entitlement is present in "rules and understandings, promulgated and fostered by state officials." *Perry v. Sinderman*, 408 U.S. 593, 93 U.S. 2694, 33 L.Ed.2d 570 (1972). Consequently, since Rodriguez meets both of these requirements as a Virginia attorney receiving Legal Ethics Opinion (A-18) and perfecting his Attorney's Lien, Rodriguez does have a constitutionally protected property right which has been violated by the Courts of Virginia.

shells" in any of the waters of the State, on board any vessel "not wholly owned by some person, inhabitant of and actually residing in this State. . . . (Emphasis added). The inquiry is," wrote Justice Washington, "what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several States which compose this Union, . . ." He specified the following rights as answering this description: "Protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the Government must justly prescribe for the general good of the whole. The right of a citizen of one State to pass through, or to reside in any other State, for purposes of . . . professional pursuits . . . ; to institute and maintain actions of any kind in the courts of the State; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State; . . . ." *Id.*, 551-552.

Thus Justice Washington's opinion in *Coryell* afforded the Court the standard; while recognizing that the opinion relied on notions of natural rights, the Court thought he used the term ``fundamental" in the modern sense as well. This Court held whether an activity in which a nonresident wishes to engage is

within the protection of the clause, the activity must be fundamental, such that the interference with which would frustrate the purposes of the formation of the United States. Thus the right to practice law is to be considered fundamental activity, and protected against unreasonable burdening, *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985).

Once finding a fundamental interest protected under the clause, in the particular case the right to pursue Rodriguez's international *pro hoc vice* practice and receive the same rights as a Virginia attorney practicing locally, the Court must employ its two-pronged analysis to determine whether the Courts of Virginia's distinction between a Virginia attorney's local practice and a nonresident Virginia attorney's *pro hoc vice* practice are justified.[10] Thus, the Courts of Virginia was compelled to show that nonresident Virginia attorneys constituted a peculiar source of the evil at which their procedural rules which disregarded VA Code § 54.1-3932 and § 18.2-500, were aimed and that the discrimination bore a substantial relationship to the particular "evil" they are said to represent, e.g.,

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[10]Although the clause specifically refers to "citizens," the Court treats the terms "citizens" and "residents" as "essentially interchangeable." *Austin v. New Hampshire*, 420 U.S. 656, 662 n. 8 (1975); *Hicklin v. Orbeck*, 437 U.S. 518, 524 n. 8 (1978). Thus although Rodriguez is a resident of Virginia, he is a "nonresident" for purposes of seeking to protect his right to be paid for his *pro hoc vice* practice VA Code § 54.1-3932, and protect his property right from a business conspiracy under VA Code § 18.2-500, just as a Virginia attorney with a local practice.

that it is "closely tailored" to meet the actual problem. *See Barnard v. Thorstenn*, 489 U.S. 546 (1989); *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988). Since they could not they issued summary unpublished orders in the instant action.

Specifically on point is *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985), where Justice Powell, who delivered the opinion for the Supreme Court, and by chance was another Virginia attorney, stated that "[o]nly with respect to those `privileges' and `immunities' bearing on the vitality of the Nation as a single entity" that a State must accord residents and nonresidents equal treatment. Even Chief Justice Rehnquist who in his dissent viewed the practice of law "fundamentally different from those other occupations that are practiced across state lines without significant deviation from State to State," confirmed that it was up to the State legislature to decide how to treat the rights of resident and nonresident attorneys, not the State Courts.

Therefore, Rodriguez relies on this Court's decisions invalidating discriminatory residency requirements on an attorney to challenge the rules of procedure of the Courts of Virginia that authorizes granting a demurrer. See *Barnard v. Thorstenn*, 489 U.S. 546 (1989); *Supreme Court v. Friedman*, 487 U.S. 59 (1988); *Frazier v. Heebe*, 482 U.S. 641 (1987); *Supreme Court v. Piper*, 470 U.S. 274 (1985). In each of those cases which involved a residency requirement that discriminated against out-of-state residents, this Court held that such requirements were invalid under

either the Privileges and Immunities Clause or the Court's supervisory power over federal courts.

Here, there is exactly the type of prohibited discrimination because the Courts of Virginia using their rules of court have refused to enforce the protection against client fraud which it grated to all other Virginia attorney practicing locally. Here Rodriguez who as a Virginia Attorney has passed the state's bar examination and has been an active member in good standing of the bar since 1982, and has an international *pro hoc vice* practice specialized in litigating on behalf of individual against government abuse, is being deprived of his statutory property right by the Supreme Court of Virginia and the Circuit Court through their rules of practice granting SSA Entities motion to dismiss and Vander Jagt Pledgers motion to demurrer, in clear violation of Article IV, sec 2 of the U.S. Constitution, the Constitution of Virginia, and the clear protection granted to all Virginia Attorney's under VA Code § 54.1.3932 (B-2) and § 18.2-500 (B-3).[11]

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[11]The surreal nature of this petition is that while Rodriguez has been deprived of his right to enforce and protect his statutory property rights in his Virginia Attorney's Lien from a business conspiracy to fraudulently damage his profession, SSA Entities' Virginia State Bar Complaint against Rodriguez for his allegedly filing "frivolous law suits in federal and state courts against them and/or the entities they represent," has been ongoing for over twelve months to the present, VSB Docket No 04-052-1044. Related to this petition is Rodriguez's Son's action to enforce a Treaty, *Master Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children, et al.,* Supreme Court Docket Nos.

B. Sherman Anti Trust and Privilege and Immunity.

Given that both the Federal and State Courts provide protection under both the VA Code and even under general contract theory provide for a Virginia attorney with a local practice in the State to enforce an action for his fees, *English & Smith v. Metzger*, 901 F.2d 36, 39 (4th Cir. 1990) (and logically protect fees from a business conspiracy to commit fraud, see *EPLUS Technology, Inc. v. Patricia Aboud et al*, 155 F.Supp2d 692 (E.D. VA 2001), the refusal to provide the same protection to Rodriguez as a Virginia Attorney providing *pro hoc vice* service under the supervision of the Virginia State Bar is not only discriminatory, arbitrary, and a violation of Constitutional rights, but too, is an illegal restraint on interstate trade under 15 U.S.C. Sec. 1, Sherman Antitrust Act.[12]

04-454 and 04-724, where too the Virginia State Bar has been investigating a Bar Complaint for over 14 months filed by the NCMEC based on the same ground, VSB Docket No 04-052-0794. Thus Rodriguez and his Son are being subject to VSB investigation for exercising their right to access to the courts to redress a grievance against the government.

[12]Also as noted to the Courts of Virginia, to not enforce Rodriguez's right in his VA Attorney's Lien for his *pro hoc vice* fiduciary services would be an impermissible burden on interstate commerce, and an unlawful usurpation of the power granted only Congress to regulate Commerce, pursuant to Art. I, Section 8, cl. 3, United States Constitution. See *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 92 L. Ed. 1460 (1948).

At the outset, *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 44 L.Ed. 2d 572, 95 S.Ct 2004, reh. den 423 U.S. 886 (1975), has done away with the "learned profession exception" to Section One of the Sherman Act. Consequently pursuant to *City of Philadelphia v. New Jersey*, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978), the territorial restraints which the rules of the Courts of Virginia have created in discriminating against Rodriguez's statutory property right in his Virginia Attorney's Lien for *pro hoc vice* services outside of Virginia vis-a-vis a Virginia attorney with a local practice, deny him the benefits and protection of the Virginia Code and cause a burden on interstate commerce constituting an antitrust violation.

By denying the same statutory property rights and protection from client fraud granted to all other Virginia Attorneys residing and practicing locally in Virginia, the Courts of Virginia impede the formation of an international law practice. The rules of the Courts of Virginia are particularly unreasonable given that the Virginia State Bar in the Legal Ethics Opinion authorized litigation to prevent fraud, confirmed that it supervised the professional standards of Rodriguez irrespective of where his practice is located, and for the past 14 months to the present has conducted a detailed investigation of Rodriguez based on the VSB Complaint filed by SSA Entities. Thus Virginia Court's interest based on: (a) its responsibility of maintaining professional competence; and (b) the economic protection of the Virginia State Bar members is not present.

II. THE WRIT SHOULD BE GRANTED BECAUSE COURTS OF VIRGINIA HAVE DISCRIMINATORY DENIED RODRIGUEZ OF DUE PROCESS IN NOT ENFORCING AND PROTECTING HIS STATUTORY PROPERTY RIGHTS GIVEN TO ALL VIRGINIA ATTORNEY LOCATED IN VIRGINIA BECAUSE HIS *PRO HOC VICE* PRACTICE IS OUTSIDE OF THE STATE BUT UNDER THE VSB'S JURISDICTION

DUE PROCESS - is best defined in one word--fairness. The 5th Amendment to the Constitution (B-1), guarantees that the government cannot take away a person's right to property, without due process of law. The 14th Amendment to the Constitution (B-1), prohibits the deprivation of property without due process of law.

In order to state a due process claim, Rodriguez "must first demonstrate that [he] possess[es] a `cognizable property interest, rooted in state law' in the lost benefit." *Biser v. Town of Bel Air*, 991 F.2d 100, 103-04 (4th Cir.), cert. denied 114 S.Ct. 182 (1993) (quoting *Scott v. Greenville County*, 716 F.2d 1409, 1418 (4th Cir. 1983)). "A property interest requires more than a "unilateral expectation' . . . [I]nstead, there must be a "legitimate claim of entitlement.'" Id. at 104 (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972), *Mandel v. Allen*, 81 F.3d 478, 481 (4th Cir. 1996). When a person is treated unfairly by the government, including the Courts of Virginia, he is said to have been deprived of or denied due process. *See. New York. Kulko v. Superior Court*, 436 U.S. 84 (1978).

This Court stated in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976), a case regarding termination of Social Security benefits, that "due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Due process is flexible and calls for such procedure protections as the particular situation demands."

Thus a review of the record establishes that the following elements of the adversary process were denied Rodriguez and were required as part of the "due process" before the courts can be permitted to deny him of to a statutory property right include an opportunity to discovery and present evidence or witnesses to the decision-maker; a chance to confront and cross-examine opposing witnesses or evidence; the Virginia Constitution and VA Code § 8.01-336 right to a jury trial on the various disputes of fact below; and a judicial decision based on the record with a statement of fact and law as to the reasons for the decision.

Not only was this last element denied in the summary unpublished orders (A-5, A-9, and A-16), but too, the gravamen of the entire action that is based on Rodriguez's statutory property right under VA Code § 54.1-3932, that gives all Virginia Attorneys a "legitimate claim of entitlement" was never even discussed.

Thus the Courts of Virginia issuance of summary unpublished orders deprived Rodriguez to due process under VA Code § 54.1-3932, Virginia Bar Legal Ethics Opinion (A-18), and VA Code § 54.1-3910 (B-4), and

his right to protect his lien from a fraudulent business conspiracy in violation of VA Code § 18.2-500.

III. THE WRIT SHOULD BE GRANTED BECAUSE COURTS OF VIRGINIA HAVE DISCRIMINATORY DENIED RODRIGUEZ EQUAL PROTECTION OF THE LAWS BY NOT PROVIDING THE DEMANDED JURY TRIAL AND NOT FOLLOWING *STARE DECISIS*.

A. Equal Protection

The Fourteenth Amendment (A-1), provides that the Courts of Virginia cannot "deny to any person within its jurisdiction the equal protection of the laws." Thus the equal protection clause guarantees that the Courts of Virginia may not be arbitrary, capricious or discriminatory in the application of its laws. See *Norvell v. Illinois*, 373 U.S. 420, 83 S.Ct. 1363, 10 L. Ed. 2d. 456 (1963). Although generally the right to practice law is not a privilege or immunity under the Fourteenth Amendment, *In re Lockwood*, 154 U.S. 116, 14 S.Ct. 1082, 38 L.Ed. 929 (1894), the constitutional right of equal protection standards is invoked as here when an entitlement exists (i.e., Virginia Statutory Attorney's Lien), or where there is arbitrary action (i.e., refusal to explain the denial of a property right and of the protection of a Virginia Attorney's Lien from client's fraud), or invidious discrimination by the Courts of Virginia which excludes an individual from a *pro hoc vice* practice by denying him of his property right under the Virginia Code in his Virginia Statutory Attorney's Lien and to protect the same against a Business Con-

spiracy, *see Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752, 1 l.ed2d 810 (1957)(involving a law school's graduate's application to sit for the bar exam), and *Knoingsberg v. State Bar of California*, 353 U.S. 252, 77 S.Ct. 722 1 L.Ed. 2d 810 (1957)(concerning an application by an out-of-state attorney for permanent admission). In both decisions the Court held that state are free to determine the right of the practice of law as long as it is not exercised in an arbitrary and discriminatory manner.

Obviously, in the instant action by refusing to comply with the Virginia Code's protection given to all Virginia attorney in their statutory attorney's lien because the Virginia attorney is providing *pro hoc vice* services, is both arbitrary and discriminatory, and a violation of equal protection. Here both the Circuit Court and the Supreme Court of Virginia had abused their respective discretion in disregarding totally the statutory right of a Virginia Attorney's property right in his statutory attorney's lien–this is particularly true in the instant action when the Legal Ethics Opinion (A-18) specifically stated that he could sue to prevent fraud, and that since January 2004, Rodriguez has been the subject of a vigorous investigating of the Virginia Bar Complaint filed SSA Entities against Rodriguez for his attempt to enforce his lien

B. Demand for Jury Trail

In *Warren Christopher, Former Secretary of State, et Al., Petitioners V. Jennifer K. Harbury*, 2002 U.S. LEXIS 4647, 536 U.S. 403; 122 S. Ct. 2179, 2198; 153

L. Ed. 2d 413 (2002), this court held that decisions of this Court have grounded the right of access to courts in Article IV Privileges and Immunities Clause, *Chambers* v. *Baltimore & Ohio R. Co.,* 207 U.S. 142, 148, 52 L. Ed. 143, 28 S. Ct. 34, 6 Ohio L. Rep. 498 (1907), the Fifth Amendment Due Process Clause, *Murray* v. *Giarratano,* 492 U.S. 1, 11, 106 L. Ed. 2d 1, 109 S. Ct. 2765, n. 6 (1989) (plurality opinion), and the Fourteenth Amendment Equal Protection, *Pennsylvania* v. *Finley,* 481 U.S. 551, 557, 95 L. Ed. 2d 539, 107 S. Ct. 1990 (1987), and Due Process Clauses, *Wolff* v. *McDonnell,* 418 U.S. 539, 576, 41 L. Ed. 2d 935, 94 S. Ct. 2963, 71 Ohio Op. 2d 336 (1974); *Boddie* v. *Connecticut,* 401 U.S. 371, 380-381 (1971).

In *Christopher supra,* the Court discussed two types of denial of access to the Court, the first based on claims that systemic official action to frustrate a plaintiff in preparing and filing suits. Thus, denial of access to the court was found in *M. L. B.* v. *S. L. J.*, 519 U.S. 102, 106, 136 L. Ed. 2d 473, 117 S. Ct. 555-107 (1996) (record fee in parental-rights termination action); the second, category covers a specific case that cannot now be tried (or tried with all material evidence), no matter what official action may be in the future, *e.g., Bell* v. *Milwaukee,* 746 F.2d 1205, 1261 (CA7 1984) ("The cover-up and resistance of the investigating police officers rendered hollow [the plaintiff's] right to seek redress"), the loss of an opportunity to sue, *e.g., Swekel* v. *River Rouge,* 119 F.3d 1259, 1261 (CA6 1997) (police cover-up extended throughout "time to file suit . . . under . . . statute of

limitations"), or the loss of an opportunity to seek some particular order of relief.

Thus based on the clear mandate of the Virginia legislature and the Virginia Constitution the Courts of Virginia cannot grant in summary fashion SSA Entities, Vander Jagt and Pledger's because Article I, § 11 of the Constitution of Virginia states, "[t]hat no person shall be deprived of his . . . property without due process of law; . . . . That in controversies respecting property, . . . , trial by jury is preferable to any other, and ought to be held sacred. . . ."

In interpreting this mandate the Supreme Court stated in *Supinger v. Stakes,* 255 Va. 198, 203, 495 S.E.2d 813 (1998), that "[i]n Virginia, the right to trial by jury extends to civil litigants . . . ," and they are entitled to a fair and impartial jury trial. *Edlow v. Arnold,* 243 Va. 345, 347, 415 S.E.2d 436, 437 (1992); *see* VA Code § 8.01-336 (B-4). "Trial by jury is a sacred right, and should be sedulously guarded." *Buntin v. City of Danville,* 93 Va. 200, 212, 24 S.E. 830, 833 (1896).'"(Emphasis added).

In *Pulliam v. Coastal Emergency Services,* 257 Va. 1, 10, 509 S.E.2d 307 (1999), involving as here a case dealing with "special legislation," this Court explained that,

> at the time the Constitution was adopted, the jury's sole function was to resolve disputed facts, that this continues to be a jury's sole function [citations omitted],and that the jury's

fact-finding function extends to the assessment of damages.[*Etheridge [v. Medical Center Hospitals,* 237 Va. 87, 95-96, 376 S.E.2d 529 (1989)].

Rodriguez repeatedly requested a trial by jury, and never waived this right under the Constitution of Virginia and VA Code § 8.01-336(b) (B-4), of this action regarding special legislation enacted to enforce and protect his perfected charging Attorney's Lien for *pro hoc vice* services. Thus it was a denial of equal protection to issue a summary dismissal of this action under special legislation. This particularly true given the admissions in SSA Entities Virginia Bar Complaint of an ongoing Business Conspiracy in violation of VA Code § 18.2-499 and § 500.[13]

C. The Court of Virginia ignored *Stare Decisis*

Rodriguez is an active member in good standing of the Virginia Bar since 1982, providing *pro hoc vice* services. In its Legal Ethics Opinion the Virginia State Bar confirmed that they supervised Rodriguez's profes

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[13]Summary judgment is available to a litigant only when no material facts are in dispute. *Turner v. Lotts*, 244 Va. 554, 556, 422 S.E.2d 765, 766 (1992). Here SSA Entities disputed the material conflict in the evidence regarding the nature of Rodriguez's agreement, and his right to protect his perfected charging Virginia Attorney's Lien from common law torts and business conspiracy. Disputes of material facts should be submitted to the finder of fact and not resolved in a summary fashion. *Brown v. Sparks*, 262 Va. 567, 571, 554 S.E.2d 449 (2001).

sional conduct irrespective of where he practices and he could sue against SSA Entities fraud (A-18). Therefore, as noted above under the special legislation requirement under Article IV, § 14 of the Constitution of Virginia, any disparate treatment by the Court of Virginia of Rodriguez statutory protected contract rights under the special legislation of VA Code § 54.1-3932, would also be a violation of his right to due process and equal protection of the laws under Article I, § 11 of the Constitution of Virginia, unless they Courts can show the reasonableness of their rules of procedure. *See Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 108 S.Ct. 2260 (1988).

Thus the Courts of Virginia cannot issue summary unpublished orders granting SSA Entities, Vander Jagt and Pledger motions without overruling the *stare decisis* in *Hughes v. Cole,* 251 Va. 3 at 27, 465 S.E.2d 820(1996), regarding the enforcement and protection of the special legislation protecting a perfected charging Virginia Attorney's Lien.

Here the Circuit Court specifically refused to explain either the facts or law which permitted it to disregard the special legislation design to enforce Rodriguez's perfected charging Virginia Attorney's Lien, and logically his right to protect a perfected charging lien from the common law torts (A-9).

However this Court has held that, "property interests . . . are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law,"

Ruckelshaus v. Monsanto Co., 467 U.S. 986, 990 (1984). Thus to deny Rodriguez's his right to enforce his perfected charging Attorney's Lien based on *pro hoc vice* service outside of Virginia and his right to protect his statutory property rights is a clear denial of due process and equal protection of the laws pursuant to Article I, § 11, and Article IV, § 14 of the Virginia Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution by overruling through judicial fiat the *stare decisis* of *Hughes v. Cole,* 251 Va. 3 at 27, 465 S.E.2d 820(1996); *Heinzman v. Fine, Fine, Legum & Fine,* 217 Va. 958, 234 S.E.2d 282 (1977); and *Fary v. Aquino,* 218 Va. 889, 241 S.E. 2d 799 (1978) (as well as developed in the Fourth Circuit; *Ruebush v. Funk*, 63 F.2d. 170 (4th Cir. 1933); *Tignor v. Parkison*, 729 F.2d. 977 (4th Cir. 1984); *Katopodis v. Liberian S/T Olympic Sun*, 282 F.Supp. 369 (E.D. Va. 1968)[Rodriguez's rights as a party in interest in the contract litigation against Colombia for the 14 *Treasure Trove* based on his perfected charging VA Attorney's Liens]; *Montavon v. United States*, 864 F.Supp. 519 (E.D. Va. 1994)[Rodriguez's right in this charging lien remaining inchoate until the favorable judgement is confirmed]; and, *Heinzman v. Fine, Fine, Legum & Fine*, 217Va. 958, 234 S.E.2d 282 (1977)[Rodriguez is entitled to a fee based on *quantum merit* for his *pro hoc vice* services].[14] Here the Virginia General Assembly, as

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[14]"The law is clear that `when . . . an attorney employed under a contingent fee contract is discharged without just cause . . . the discharged attorney is entitled to a fee based upon *quantum merit* for services rendered prior to discharge and, as security for such fees, to the lien granted by [VA Code § 54.1-3932].'(citation

confirmed in the above decisions determined that a property interest exists for Virginia attorneys, but there has been a deprivation of property by the Courts of Virginia procedures regarding enforcement of Attorney's Lien].

In effect all of these statutory property rights as a Virginia attorney are lost to Rodriguez by the Courts of Virginia not following the Virginia Code and *stare decisis*. However, Chief Justice Rehnquist expressed it well in *Garcia v. San Antonio MTA*, 469 U.S. 528, 530 (1985) when he stated: "any departure from the doctrine of *stare decisis* demands special justification. . . . The stability of judicial decision, and with it respect for the authority of this Court, are not served by the precipitous overruling of multiple precedents."[15]

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omitted)." *Hughes v. Cole* 251 Va. at 23. Also Rodriguez's rights as a Virginia statutory creditor of SSA Entities cause SSA Entities director's, and their lobbyist, and attorneys, primary duty to shift to Rodriguez as a creditor, upon the dissolving of Sea Search-Armada and Armada Company. *I.T. Sales, Inc. v. Dry*, 222 Va. 6, 278 S.E.2d 789 (Va. 1981).

[15] Even the Supreme Court of Virginia stated that,

"In Virginia, the doctrine of *stare decisis* is more than a mere cliche. That doctrine plays a significant role in the orderly administration of justice by assuring consistent, predictable, and balanced application of legal principles. And when a court of last resort has established a precedent, after full deliberation upon the issue by the court, the precedent will not be treated lightly or ignored, in the absence of flagrant error or mistake." *Selected Risks Ins. Co. v. Dean,* 233 Va. 260, 265, 355 S.E.2d 579, 581 (1987).

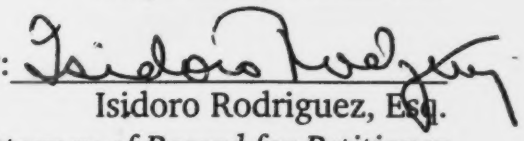
Based on the undisputed fact SSA Entities knowingly entered into a contingency fee agreement with Rodriguez subsequent to the VA Bar Ethics Opinion (A-18), SSA Entities, Vander Jagt, and Pledger could expect to be sued in Virginia to enforce and protect the perfected charging Virginia Attorney's Lien. This is logical, fair and in accordance with due process requirements because SSA Entities transacted business in Virginia by gaining the protection of Virginia laws for 12 years of Rodriguez's fiduciary services as a Virginia attorney, which were under the control of the Virginia State Bar. To do otherwise would be unjust and discriminatory since Virginia has the undisputed interest in protecting Rodriguez's rights under its special legislation–there is no contrary interest to suggest that Virginia's public policies should not control.

CONCLUSION

Paradoxically as the practice of law has become more national and international since this Courts holding in *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985) and the advent of electronic communications, the courts have sought to limit the practice of law, thus Courts of Virginia summary ruling have demonstrate an impermissible discriminatory attitude to Rodriguez as a Virginia attorney with an international *pro hoc vice* practice which at all times has been under supervision of the Virginia State Bar (A-18), by denying to him the right to enforce his property rights in his perfected attorney's lien VA Code § 54.1-3932, and protect said lien from a fraudulent

business conspiracy by SSA Entities, VanderJagt and Pledger in violation of VA Code § 18.2-500. For the above reasons the petition should be granted.

Respectfully submitted,

By: 

Isidoro Rodriguez, Esq.
Attorney of Record for Petitioner
Admission to the Bar of
The United States Supreme Court 1992

THE LAW OFFICES OF RODRIGUEZ, SIBLEY & MENDOZA, LLP
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APPENDIX

APPENDIX TABLE OF CONTENT

Appendix A, Orders and 1990 VA Bar Ethics Opinion:

November 5, 2004 Unpublished Order of the Supreme Court of Virginia denying motion to defer issuance of mandate in *Isidoro Rodriguez, Esq. v. HFP, Inc. Et al.,* Record No. 040942 . . . . . A-1

November 5, 2004 Unpublished Order of the Supreme Court of Virginia denying motion to defer issuance of mandate in *Isidoro Rodriguez, Esq. v. Guy Vanderjagt, Esq. Et al.,* Record No. 040941 . . . . . A-2

October 12, 2004 Unpublished Order of the Supreme Court of Virginia refusing the Petition for Appeal in *Isidoro Rodriguez, Esq. v. HFP, Inc., et al.,* Record No. 040942 . . . . . A-3

October 1, 2004 Unpublished Order of the Supreme Court of Virginia denying Petition for Rehearing in *Isidoro Rodriguez, Esq. v. Guy Vanderjagt, Esq. Et al.,* Record No. 040941 . . . . . A-4

August 13, 2004 Unpublished Order of the Supreme Court of Virginia refusing the Petition for appeal in *Isidoro Rodriguez, Esq. v. Guy Vanderjagt, Esq. Et al.,* Record No. 040941 . . . . . A-5

February 27, 2004 part of hearing transcript before THE HONORABLE ROBERT W. WOOLDRIDGE, JR., Fairfax County Circuit Court in *Isidoro Rodriguez, Esq. v. HFP, Inc., et al.,* At Law No 215327 . . . . . A-6

February 27, 2004 Order of THE HONORABLE ROBERT W. WOOLDRIDGE, JR. A-10

January 23, 2004 part of hearing transcript before THE HONORABLE ROBERT W. WOOLDRIDGE, JR., in *Isidoro Rodriguez, Esq. v. Guy Vanderjagt, Esq. et al.,* At Law No 215327 . . . . . A-11

January 23, 2004 Order of THE HONORABLE ROBERT W. WOOLDRIDGE, JR. A-16

Virginia Bar Legal Ethics Opinion #1325, February 27, 1990 . . . . . A-18

SECTIONS OF U.S. AND VIRGINIA CONSTITUTION, AND VIRGINIA STATUTES INVOLVED

PRIVILEGES AND IMMUNITIES, Art. IV, 2 . . . . . B-1

AMENDMENT V B-1

AMENDMENT VII B-1

AMENDMENT XIV B-1

CONSTITUTION OF VIRGINIA, SECTION 11 . . . B-1

Virginia Code § 54.1-3932. Lien for fees B-2

Virginia Code § 18.2-499 . . . . . B-2

Virginia Code § 18.2-500 . . . . . B-2

Virginia Code § 8.01-328.1 . . . . . B-3

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 5th *day of* November, 2004.

Isidoro Rodriguez, Esq.

Appellant,

v. Record No. 040942
Circuit Court No. L215327

HFP, Inc., et al.,

Appellees.

From the Circuit Court of Fairfax County

On October 15, 2004 came Isidoro Rodriguez, Esquire and filed a motion to defer issuance of the mandate in this case. Upon consideration whereof, the Court denies the motion.

A copy,

Teste:

_____S_____
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 5th *day of* November, 2004.

Isidoro Rodriguez, Esq.

Appellant,

v. Record No. 040941
Circuit Court No. L215327

Guy Vanderjagt, Esq., et al.,

Appellees.

From the Circuit Court of Fairfax County

On October 5, 2004 came Isidoro Rodriguez, Esquire and filed a motion to defer issuance of the mandate in this case. Upon consideration whereof, the Court denies the motion.

A copy,

Teste:

_____S_____
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 12th *day of* October, 2004.

Isidoro Rodriguez, Esq.

Appellant,

v. Record No. 040942
Circuit Court No. L215327

HFP, Inc., et al.,

Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case and consideration of the argument submitted in support of the granting of the appeal, the Court is of the opinion there is no reversible error in judgement complained of. Accordingly, the Court refuses the petition for appeal.

Upon further consideration whereof, appellant's motion for judicial notice is denied.

A copy,

Teste:

_____S_____
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 1st *day of* October, 2004.

Isidoro Rodriguez, Esq.

Appellant,

v. Record No. 040941
Circuit Court No. L215327

Guy Vanderjagt, Esq., et al.,

Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgement rendered herein on the 13th of August, 2004 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste:
_____S_____
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 13th *day of* August, 2004.

Isidoro Rodriguez, Esq.

Appellant,

v. Record No. 040941
Circuit Court No. L215327

Guy Vanderjagt, Esq., et al.,

Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case and consideration of the argument submitted in support and in opposition to the granting of the appeal, the Court is of the opinion there is no reversible error in judgement complained of. Accordingly, the Court refuses the petition for appeal.

A copy,

Teste:

_____S_____
Clerk

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ, ESQ.,
Plaintiff,

vs. At Law No. 215327

GUY VANDERJAGT, ESQ., et al.,
Respondent.

* * * * *

Fairfax Virginia
Friday, February 27, 2004
The proceedings commenced at 10:12 a.m.

BEFORE:

THE HONORABLE ROBERT W. WOOLDRIDGE, JR.

* * * * *

MR. PLEDGER (Page 2, line 8): . . . The issue is not whether Mr. Rodriguez has an attorney's lien or does not have an attorney's lien. The issue is whether this Court has jurisdiction over these nonresidents and whether service under the Long Arm Statute of Virginia is appropriate.

MR PLEDGER (line 3, line 6): You know this has been ruled on by other judges in Virginia. It has been ruled on by appellate courts based on the ruling in the District Court, and it has been the subject of petitions for certiorari to the Supreme Court of the United

States. . . .

THE COURT (Page 3, line 14): The rulings in the Federal District court or courts, did they follow an evidentiary hearing or not?

MR. PLEDGER (Page 3, Line 17): There was no evidentiary hearing. There was just a hearing on the motions. Judge Cachceris held a hearing and Judge Lee in the second case held a hearing. Both involving basically the same issue; that is, does Virginia long arm jurisdiction apply in this particular case. . . . .

THE COURT (Page 4, line 11): I don't have any questions. Thank you.

MR. RODRIGUEZ (Page 4, Line 17): To take off where my opposing counsel left off, the federal courts, both Judge Cachceris and Judge Lee never dealt with the Virginia statutory issues. . . . (Page 5, line 12) [N]one of these decisions, neither in the District Court nor in the federal [appeals] court ever dealt the with the issue of Virginia statutory rights, either in the Virginia statutory lien or under the business conspiracy statute. They dealt with it on simple contract terms.

MR. RODRIGUEZ (Page 8, Line 20): They being Sea Search Armada entities was all managed by Mr. Harbeston. And based on the[ir] Virginia Bar complaint, which I provided the Court a copy of, which is essentially a surreal confession of all that I have alleged. . . .

(Page 9, Line 19) The Key to this thing is two issues: *Hugh v. Cole*, dealing with the Virginia attorney's need for enforcement of the attorney's lien, and the [Virginia] Supreme Court has said there is not limitations; that here, after the [1991] Virginia Bar

complaint was filed , these parties entered int a new contingent fee contract [with me], and that as consideration of that , the removal of the hourly fee contract. . . .

(Page 10, line 5)The second part is a business conspiracy. Subsequent to the negotiation[s with Colombia in 1998], I believe, that is when they [say] and if you read the[ir] Virginia Bar complaint, they essentially say that for the last 112 years, I was a translator to my agent. And that I was supposed to be paid by my agent.

Now, that, if nothing else, gives a prima facie case there is some type of conspiracy confession {which must go to a jury]. And that's the second part of this lawsuit.

Now, the second part, the business conspiracy statue issue, was never de lt with by Judge Lee, either under contract - -or judge Cachceris. So jurisdiction exists both under § 8.01-328-1[1], because there was transacted business subsequent to the entering of the contingency fee contract, continuously, in order to maintain the law suit in Colombia. And second, for business conspiracy under the same statute, [3] and [4], dealing with tortious acts in and out of Virginia to damage my reputation, my business and my profession.

THE COURT (Page 13, Line 9); All right, sir. Thank you. The motion for defendants to dismiss for lack of personal jurisdiction is granted.

MR. RODRIGUEZ: May I respectfully request a reason as to why?

> THE COURT: Because I believe the motion is well taken. That's the only reason I'm going to give you.

* * * * *

(At 10:37 a.m. proceeding concluded)

Joy R. Dawson, Registered Merit Reporter

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY
RODRIGUEZ
Plaintiff/Complaint

v. Law No. 215327

Vander Jagt et al.,
Defendant/Respondent,

ORDER

This case came to be heard on the 27th day of February, 2004, on the Defendants motion to dismiss.

Upon the matters presented to the Court at the Hearing it is, ADJUDGED, ORDERED, AND DECREED as follows: that the motion of the defendants HFP, Inc., IOTA Partners LP; Murdock & Company; Jerome Baron, Jack Harbeston and Edris S. Harbeston to dismiss is granted. Further Ordered that these defendants motion for sanctions is denied.
Entered, this 27th day of February, 2004.

_____/S/_____
Robert W. Wooldridge, Circuit Court Judge

Objection based on issues raised in Response Brief, and as noted in argument.

_____/S/____
Isidoro Rodriguez
Counsel for Plaintiff

____/S/_____
R. Harrison Pledger, Jr.
Counsel for Defendant

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ISIDORO RODRIGUEZ, ESQ.,
Plaintiff,

vs. At Law No. 215327

GUY VANDERJAGT, ESQ., et al.,
Respondent.

* * * * *

The above-entitled matter came for motion hearing on Friday, January 23, 2004, commencing at 11:50 a.m., at 4110 Chain Bridge Road, Fairfax, Virginia, before Deborah Rinaldo, Notary Public, M.A.R. Reporting Group, Professional Court Reporters, www.mar-reporting.com, (703)534-1225

BEFORE:
THE HONORABLE ROBERT W. WOOLDRIDGE, JR.

* * * * *

MR. MCDONOUGH(Page 6, line 12):. . . . I represent the attorney who was hired by SSA and its various entities and general partners in defense of the lawsuit by Mr. Rodriguez to try to collect his claimed attorney's fees that he earned representing that entity.

It's our position that this is --really what Mr. Rodriguez is trying to do is to prosecute that core case against his former client and he wants to do it in

Virginia. He's been rejected twice by the Eastern District of Virginia, and those were affirmed on appeal.

The petition to the U.S. Supreme court was denied and now the second federal case has gone through Eastern District of Virginia, Fourth Circuit Court of Appeals, and now that's on petition to the Supreme Court. I suspect that will be rejected as well.

Mr. Rodriguez wants to have those claims heard in Virginia. In order to do that he has added Mr. Pledger and his law firm and Mr. Vander Jagt as individual defendants of the claim solely to try to get jurisdiction in Virginia to his claims.

He doesn't want to go where the federal court told him to go. The federal Court told him, you don't have proper jurisdiction in Virginia. You may have claims. Go to them in the right court.

That's our position there today. It's the same thing again. If he wants to pursue his attorney's lien, he needs to go against his former client, SSA in a proper jurisdiction following the federal court's instructions on that regard. . . .

MR. RODRIGUEZ (Page 9, line 15):. . . .This case essentially involves statutory rights on the attorney's lien as well as a business conspiracy statute. And the benchmark, as stated by Supreme Court in dealing with statutory construction, is *Abby v. Willey*, W-I-L-L-E-Y, at 497 southeast 526-253 Virginia 88, 1997.

And I quote, "Where the legislature has used words of a plain and definite import, the court cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed."

With regard to those two statute, there were two

clear public expressions of policy that the Virginia legislature intended. One was the payment of an attorney for his fees if he was dismissed prior to the termination of litigation of contracts; and two, if there was an attempt to deprive him and damage him of his business convention to have a cause of action.

Now, the [interpretation of] Virginia statute of attorney's lien from the Virginia Supreme Court in Hague v. Cole says it very emphatically. And I quote, "Virginia Code 54-392 is broad and permits no interpretation limits to the benefits of [the] statute to a Virginia lawyer."

The business conspiracy statute says, "Conspiracy is an agreement between two individuals or more who by concert in action seek to commit an offense." . . . That's in Bowman v. Commonwealth, 11 Virginia Appeals 259 (1990).

Again, the Virginia Court of Appeals stated in *Brown v,. Commonwealth* at 10 Virginia Appeals 73 (1990), "Proof of an explicit agreement is not required. The agreement may be proved by circumstantial evidence.

What we have here is a lobbyist/negotiator/ attorney by the name of Guy Vander Jagt, former congressman, who form 1988 to the present or to sometime - - unspecified time was the negotiator of a contract litigation against the Republic of Colombia.

At the same time that I was legal representative for the entities that was litigating and forced to be in Colombia, when the negotiations began and I began to inquire [in 1998], then shut me out. I cam forward to Virginia to find out what occurred.

THE COURT: I have read your motion for judgement and I've read the amended motion for judgement. We are really dealing now with the issues that are raised on the demurrer.

MR. RODRIGUEZ: Thank you, Your Honor. (Page 12, line 20) The issue is whether or not giving 12 years of participation as a chief lobbyist/negotiator [by] Mr. Vander Jagt, all of a sudden the entities that I had been litigating [for can be permitted to] simply disappear.

They negotiated some type of settlement in the Republic of Colombia and dissolved . . . .

Now, Mr. Pledger, during the period that I was attempting to exercise my rights [as a Virginia Attorney] under the Virginia code, and Mr. Vander Jagt, as well as in the federal district court in the District of Columbia, raised the issue as if it was [only a simple] contract suit.

They used whatever influence they had. Ans as I pointed out int the [U.S. Supreme Court petition, unless there is an exception--The Rodriguez exception to the Virginia statute that permits the federal [and state] courts to ignore the statutory language and simply decide the case on contracts, there is a prima facie case that has to go to a jury. . . .

(page 13, line 13) . . . . [the demurrer] as the Court knows, in effect accepts as true, for purposes of he demurrer, all of my allegations in the first amended complaint.

The only question before this Court is a legal one, whether the statute that gave me the attorney's lien. . . deserves the protection of the statute against a business conspiracy.

(Page 14, line 18). . . . there is not one citation to the statutory issue which was the basis of the gravamen of the entire complaint. . . .

Because of that fact that the case was never dealt with, the gravamen of the complaint [regarding rights under Virginia Statute], they dealt with the case [as if it were] a contract, the twin doctrines of collateral estoppel or res judicata are not germane. And I fact, the business conspiracy statute was never even discussed.

The Court (page 16, line 3) The defendants' demurrers are sustained without leave to amend, and I dismiss these defendants as parties in this case. I dismiss the claims against them.

The defendant's motion for sanctions is denied. The plaintiff's motion are moot. give me an order please before you all leave.

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Isidoro Rodriguez, Esq.,
Plaintiff/Complaint,

v. Law No. 215327

Guy Vander Jagt et al.,
Defendant/Respondent,

ORDER

This case came to be heard on the 23rd day of January, 2004, on the Defendants motion to Strike, Demurrer and Sanctions filed by Pledger and by Vander Jagt.

Upon the matters presented to the Court at the Hearing it is, ADJUDGED, ORDERED, AND DECREED as follows: Pledger's motion to Strike and Motion for Sanctions is denied and Vander Jagt's motion to strike and Motion for Sanctions is Denied. Pledger's Demurrer is Sustained and all claims against Pledger individually and Pledger & Feord are dismissed with prejudice. Vander Jagt's Demurrer is sustained and all claims against Vander Jagt are dismissed with prejudice.

Entered, this 23rd day of January, 2004.

/S/
Robert W. Wooldridge, Circuit Court Judge

Objection to dismissal of
Vander Jagt and Pledger.
Objection to dismissal
with prejudice.

_____/S/____
Isidoro Rodriguez
Counsel for Plaintiff

_____/S/_____
Counsel for
Defendant Vander Jagt

_____/S/_____
Counsel for
Defendant Pledger

[SEAL]
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VIRGINIA STATE BAR
Tenth Floor, Ross Building, 301 East Main Street
Richmond, Virginia 2319 (804)786-2061

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STANDING COMMITTEE ON LEGAL ETHICS

February 27; 1990
PERSONAL AND CONFIDENTIAL

Isidoro Rodriguez C., Esquire
Calle 84 No. 56-51
Piso 2, Oficina 4
Barranquilla, Colombia S.A.

Re: Legal Ethics Opinion # 1325

Dear Mr. Rodriguez:

I am writing in response to your letter dated January 3, 1990, requesting an informal advisory opinion from the Virginia State Bar Standing Committee on the Legal ethics ("committee").

You have advised that, although you are a member of the Virginia State Bar, you reside and practice in a South American country. You further indicate that you entered into an agreement, which was executed in Idaho, to represent a foreign corporation in the negotiation, settlement, and/or litigation against a foreign government resulting from the corporation's

claim as finder of a shipwreck which contained an estimated $3 billion in treasure. The agreement provided for an hourly fee rate, costs, and monthly detailed invoices and was affirmed by the corporation's Board of Directors which also named you as Legal Representative for the corporation. You have described for the committee that a Legal Representative In the country in which you practice is distinct from an attorney at law and is the commercial. representative for the company in that country with all of the corporate powers of the Board of Directors and all, of the potential individual liability. Furthermore, such a Legal Representative is not required to be an attorney at law. Subsequent to those corporate actions, you were authorized to bring a legal action against the foreign government and you authorized your then-law partner, which partnership has subsequently been dissolved, to file the suit as Attorney of Record. The facts you have provided indicate that the suit was filed shortly after you authorized your partner to do so.

You indicate that, although much time has been expended on the case and the corporation repeatedly expressed satisfaction with the work being performed by your firm, the corporation has failed to comply with its contractual agreement to pay invoices after they were presented. Specifically, the corporation agreed to pay $10,000 approximately two months after suit was filed and an additional $50,000 within 30 days thereafter. The first payment ($l0,000) was made as scheduled, but no further payments have been made by the corporation. Subsequent to that

first payment, the corporation requested a contingent fee agreement be submitted for consideration; such a contract was prepared and submitted, but the corporation has not responded.

In addition to the failure to pay fees, you indicate that the corporation, without your knowledge, sent a defamatory letter against the foreign government which then prepared an official protest to the United States Embassy. You indicate that the letter accused the government and unnamed officials of criminal acts, subjecting you, as the corporation's Legal Representative, to civil liability and both you and your former law partner to physical danger.

As a result of both issues, failure to pay fees and costs owed and the defamatory latter, you requested that the corporation retain a new Legal representative and a new attorney. You indicate that to date you have not received any response from the corporation's Board of Directors.

Finally, you advise that under the law and professional norms of the foreign government, your former 1ev partner has a right to unilaterally and voluntarily withdraw from the litigation, without any requirement to seek permission of the trial court. You indicate that he may also file a civil suit against the corporation for monies owed during or after litigation. Your former partner has not exercised those rights pending your receipt of this informal advisory opinion.

You have asked that the committee opine as to the propriety of your renunciation of your fiduciary appointment as Legal Representative to the corporation in view of the non-payment of costs and fees owed and of the defamatory letter sent by the corporation to the foreign government. You have further inquired as to the propriety of your instituting suit against the corporation for their non-payment of fees and costs owed.

The appropriate and controlling rules relative to your questions are DR l-102(A)(4) which prohibits a lawyer from engaging "in conduct involving dishonesty, fraud,
deceit, or misrepresentation which reflects adversely on [the] lawyer's fitness to practice law"; DR 2-l08(B)(2, 3, and 4) which proscribe the conditions which permit a lawyer to withdraw from representing a client; DR 2—108©) which directs that counsel of record in a court proceeding may not withdraw except by leave of court after notice to the client of the timeand place of a motion for leave to withdraw; and DR1-102(B) which instructs that a lawyer admitted to practice in Virginia is subject to the Virginia Code of Professional Responsibility although engaged In practice elsewhere, unless disciplinary rules of the foreign jurisdiction permit the activity [emphasis added].

The committee is of the opinion that the provisions of DR l-l02(A)4) embrace far more than an attorney's conduct in the context of an attorney/client relationship. Thus, the committee

opines that when an attorney assumes the responsibility of acting as a fiduciary and violates his or her duty in a manner that would justify disciplinary action had the relationship been that of attorney/client, the attorney may be properly disciplined pursuant to the Code of Professional Responsibility. The committee thus specifically adopts the conclusions reached in ABA Formal Opinion 336. See also: State. v Freeman, 229 Kan. 639, 629 P.2d 716 (1981); and Committee on Professional Ethics v. Gross, 322 N.V2d 82 (Iowa 1982).

Virginia Disciplinary Rule 2-108(B), subsections (2), (3), and (4), directs that a lawyer may withdraw from representing a client if (2) the client persists in a course of conduct involving the lawyer's services that the lawyer reasonably believes is illegal or unjust; (3) the client fails to fulfill an obligation to the lawyer regarding the lawyer's services and such failure continues after reasonable notice to the client; or (4) the representation
will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. The committee is of the opinion that, under the facts you have provided, it would n6t be improper to move to withdraw as Legal Representative for the corporation. See also LEO #974. The committee understands, however, from your recitation of the facts, that such permission of the court is not required in the foreign country in which you practice. Under those circumstances, the committee directs your attention to

DR 1-102(B) which, as noted above, would control. Therefore, if the professional norms in that country permit unilateral and voluntary withdrawal from representation without authorization by the court, it would not be improper for you to act accordingly.

The committee has earlier opined that there is no disciplinary rule ethically prohibiting an attorney from bringing an action against his client for past-due attorney's fees end costs. See LEOs #974 and 995. Guidance I available under Ethical Consideration 2-25 which urges that a lawyer should not sue a [current] client for a fee unless necessary to prevent fraud or gross imposition by the client. See LEO 11117. But see LEOs #1230 and 1257.

This opinion is advisory only, based only on the facts you presented and not binding on any court or tribunal.

Very truly yours,
Kathleen O'Brien

Encl.
cc: C. Torrence Armstrong, Esquire
Willard M. Robinson, Jr., Esquire
Susan B. Spielberg, Esquire

U.S. CONSTITUTION, PROVISIONS INVOLVED

Privileges and Immunities Clause of Art IV, 2, provides that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

The Due Process Clause of the Fifth Amendment provides in pertinent part, that no person shall "be deprived of . . . property, without due process of law."

The Seventh Amendment provides that "[i]n suits at common law, . . . , the right of trial by jury shall be preserved . . . ."

The Due Process Clause of Section 1 of the Fourteenth Amendment provides that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

VIRGINIA CONSTITUTION AND VIRGINIA STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF VIRGINIA, SECTION 11. DUE PROCESS OF LAW; OBLIGATION OF CONTRACTS; . . . ; JURY TRIAL IN CIVIL CASES.

That no person shall be deprived of his . . . property without due process of law; that the

General Assembly shall not pass any law impairing the obligation of contracts, . .

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred . . . .

Virginia Code § 54.1-3932. Lien for fees.

Any person having or claiming a right of action sounding in . . . contract, may contract with any attorney to prosecute the same, and the attorney shall have a lien upon the cause of action as security for his fees for any services rendered in relation to the cause of action or claim. . . .

Title 18.2 Crimes and Offenses Generally , Chap. 12 Miscellaneous, §§ 493 - 510, Art. 2 Conspiracy to Injure Another in Trade, Business or Profession, §§ 499 - 501

Virginia Code § 18.2-499. Combination to injure others in their reputation, trade, business or profession: right of employees

(a) Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of wilfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another form doing or performing any lawful act, shall be jointly and severally guilty of a Class 3 misdemeanor. Such punishment shall be in addition to any civil relief

recoverable under § 18.2-500.

(b) Any person who attempts to procure the participation, cooperation, agreement or other assistance of any one or more persons to enter into any combination, association, agreement, mutual understanding or concert prohibited in subsection (a) of this section shall be guilty of a violation of this section and subject to the same penalties set out in subsection (a) hereof.

Virginia Code § 18.2-500. Same; civil relief; damages and counsel fees; injunctions. —
(a) Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499, may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel; and without limiting the generality of the term, "damages" shall include loss of profits. Such counsel shall in no case receive any other, further or additional compensation except that allowed by the court and any contract to the contrary shall be null and void.

Virginia Code § 8.01-328.1.

When personal jurisdiction over person may be exercised.

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;...;

3. Causing tortious injury by an act or omission in this Commonwealth;

4. Causing tortuous injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly . . .engages in any other persistent course of conduct, or derives substantial revenue from . . . services rendered, in this Commonwealth;. . . .

Virginia Code § 54.1-3910. Organization and government of Virginia State Bar.

The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar. . . . All advisory opinions issued by the Virginia State Bar's Standing Committees on Legal Ethics . . . shall be incorporated into the Code of Virginia . . . .

Virginia Code § 8.01-336. Jury trial of right; waiver of jury trial . . . . —

A. The right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by statutes thereof shall be preserved inviolate to the parties.

B. Waiver of jury trial. — In any action at law in which the recovery sought is greater than $100, exclusive of interest, unless one of the parties demand that the case or any issue thereof be tried by a jury, . . . , the whole matter of law and fact may be heard and judgment given by the court. . . .